

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1116 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA and

MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgement ? YES
2. To be referred to the Reporter or not ? YES
3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO
5. Whether it is to be circulated to the Civil Judge ? NO

STATE OF GUJARAT

Versus

SATWARA K MAVJI

Appearance:

MR.UA TRIVEDI, APP for the appellant-State.

MR HARIN P RAVAL for Respondent No. 1, 2

CORAM : MR.JUSTICE K.J.VAIDYA and

MR.JUSTICE D.G.KARIA

Date of decision: 27/01/97

ORAL JUDGEMENT (PER : VAIDYA J)

This appeal by the State of Gujarat is directed against the impugned judgment and order dated 20-5-1983, rendered in Sessions Case No. 50/82, by the learned Sessions Judge, Jamnagar. wherein Satwara Kalyanji Mavji and his father Satwara Mavji Bhavan-respondent nos. 1

and 2 respectively who came to be tried for the alleged offences punishable under sections 302, 34 and 114 of IPC, were at the end of the trial ordered to be acquitted.

2. According to the prosecution, the incident in question wherein Bai Raliyat came to be strangled to death allegedly by Kalyanji and Mavji his father, took place on 15-3-1982 at about 10-00 AM at Dhrol in the house of the respondents. Incidentally, it may be stated that the deceased Raliyatben, aged 22, was a wife of Kalyanji-accused no.1. According to the PW-2, Dr. G.M.Panara, he was the Medical Officer at Dhrol and on 15-3-1982 after 12-00 Noon, PW-2 Chaku Arjan and Kalyanji Mavji (accused no.1) approached him telling that a woman had become unconscious at the Wadi and requested him to visit his house for medical check-up and treatment. Accordingly, Dr.Panara went there and found that Bai Raliyat was dead. He also found a ligature mark on the neck below thyroid cartilage and thought that the death was suspicious. Under the circumstances, Dr.Panara asked Kalyanji-husband of Bai Raliyat to bring the dead body to the hospital. After he went to the hospital Dr.Panara gave information about this incident to police, which was reduced into writing by Head-constable-Shivram, who directed another Head constable PW-15 Bhavarlal Mangilal to go to the dispensary and inquire into the matter. Head Constable-Bhavarlal accordingly went there and drew the Panchnama of the dead body and sent it for postmortem examination. Thereafter PW-1 Dr. D.M.Kagathara conducted the postmortem examination on the next day, where he also found a ligature mark on the neck of the deceased below thyroid cartilage encircling the neck horizontally and completely bluish in colour and slight laceration marks just above the ligature mark. He also found a lacerated wound on the left index, middle and ring finger-tips with coagulated blood in the wound. According to this Dr. the cause of death was strangulation. He also further opined that the death was neither suicidal nor accidental and asserted that it was homicidal. On the basis of these facts, the police ultimately registered offences punishable under sections 302, 342 and 114 of IPC against Kalyanji and his father Mavji for causing death of Bai Raliyat. At trial, the respondents pleaded not guilty and claimed to be tried. The trial court after duly appreciating the circumstantial evidence brought on the record, acquitted the accused, giving rise to the present appeal by the State, as stated above in para-1 of this judgment.

3. Heard Mr. U.A.Trivedi, the learned APP for the

appellant-State and Mr. P .M. Raval, the learned advocate for the respondents. On going through the impugned judgment and order of acquittal, it appears that the same is passed mainly on two grounds viz. (1) the extra judicial confessions alleged to have been made by both the accused persons were not proved as PW-3 Chaku Jiva father of the deceased; PW-7 Dahiben- mother of the deceased, and PW-4 Karsan Jiva did not support the prosecution; and (2) discovery of the muddamal rope was not proved since the panchas did not support the prosecution. According to the learned APP, the learned trial Judge has clearly overlooked certain material circumstances available on the record such as (1) the dead body of Bai Raliyat was found from the room of the accused no.1 where both of them lived together; (2) that the alleged incident took place in the morning hours; (3) that the conduct of the accused no.1 in particular viz. that he gave a false information to PW-2 Dr.Panara and thereafter a contrary version while giving statement to PW-15 Head constable Bhavarlal; (4) that the injury found on the person of the deceased was neither accidental nor suicidal, but was homicidal. (5) that the finding of ligature marks on the neck; etc. Now, it is no doubt true that the learned trial Judge has not adverted to these important circumstances. As against this, it was submitted by Mr.Raval that there are no circumstances brought on the record on the basis of which unerringly it can be safely said that it was only accused nos. 1 and 2 only and none others who had committed murder of Bai Raliyat. Further, according to Mr.Raval, had indeed the intention of the respondent-accused to do away with Bai Raliyat, then in that case, in the first instance, he would not have informed Doctor; in the second instance, informed the parents of the deceased who were residing at 10 Kms. away; and in the third instance, he also would not have waited for the relatives of the deceased and police to come and would have surely disposed of the body by cremating before anyone can have any idea as to how Bai Raliyat died .This conduct,according to Mr.Raval, is quite exculpatory, which must be given due weightage. Mr.Raval further submitted that assuming for the sake of argument that what the learned APP has submitted has some substance, then even that does not take the case beyond the realm of suspicion. Mr.Raval further submitted that when from the evidence available on the record, two views are possible, one in favour of the accused and another in favour of the prosecution, then in that case, more particularly in an acquittal appeal, same ought not to be disturbed. Now what is pointed out by Mr. Raval standing by itself is not sufficient to take accused out of the commission of the alleged offence. The person do

commit crime and yet cleverly enough try to screen, hide their own offence by show of innocence. It should not be difficult for any Court to pierce or lift the veil of feigned innocence by accused. However, the real difficulty in way of the prosecution is out of the two suspected accused persons who indeed committed and in fact the murder of Bai Raliyat and whether the possibility of other inmates of the house having committed her murder can be ruled out ? Not only that but quite interestingly the PW-2 father, PW-7 mother and PW-4 uncle of the deceased-Bai Raliyat has turned round and not supported the prosecution. In this view of the matter, particularly more so in case of circumstantial evidence, we do not want to take any risk by reversing the order of acquittal. We are quite conscious of the fact that foul murder of Bai Raliyat goes unpunished , but then it is indeed difficult to hold any one responsible in absence of any convincing evidence brought on the record.

5. We have gone through all the material evidence brought on the record including the evidence which came to be subsequently recorded by the trial court by virtue of an order passed by this court (Coram : B.C.Patel & K.R.Vyas JJ) on 30-9-1992. In our opinion, the circumstances brought on the record do create strong suspicion against the accused, but at the same time suspicion can not take the place of proof or truth is the well-settled, crystalized principle of the criminal jurisprudence. This court can not stretch its imagination, reasoning by bridging the gap between suspicion and truth even if the gap is hair-breadth unless of course our conscience was fully satisfied in the said regard. In this view of the matter, though the impugned judgment is little perfunctory, but since the ultimate conclusion can not be said to be perverse, it can not be reversed. Under the circumstances, there being no alternative left with this court but to confirm the order of acquittal, the same is confirmed hereby. Since we are in general agreement with the ultimate view taken by the learned trial Judge, we do not deem it necessary either to reproduce and/or reappreciate the evidence brought on the record.

6. In the result, this appeal fails and is dismissed.

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